

§ 1703.22

12 CFR Ch. XVII (1–1–08 Edition)

Searching for materials shall be done in the most efficient and least expensive manner so as to minimize the costs of OFHEO and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be less expensive and the faster method of complying with the request for information. A “search” for material that is responsive to a request should be distinguished from a “review” of material to determine whether the material is exempt from disclosure.

[63 FR 71005, Dec. 23, 1998, as amended at 65 FR 55174, Sept. 13, 2000. Redesignated and amended at 65 FR 81327, Dec. 26, 2000]

§ 1703.22 Fees to be charged—general.

(a) Generally, the fees charged for requests for records pursuant to the Freedom of Information Act will cover the full allowable direct costs of searching for, reproducing, and reviewing records that are responsive to a request for information. Fees will be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 1703.23 of this subpart for services rendered by OFHEO staff in responding to, and processing requests for, records under this part. Fees assessed shall be paid by check or money order payable to the Office of Federal Housing Enterprise Oversight.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches.* (i) *Manual searches for records.* OFHEO will charge for actual search time, billed in 15-minute segments, at a rate determined by whether the employee performing the work is classified as clerical, professional, or executive. The hourly fee for each classification is based on the average of the actual compensation (salary and benefits) of employees in the classification and is adjusted periodically to reflect significant changes in the average compensation of the class. The “executive” classification includes the senior management of OFHEO, *i.e.* Director, Deputy Director, Associate Directors and Deputy Associate Directors. The

“clerical” classification includes employees performing primarily secretarial, clerical, or ministerial tasks. The “professional” classification includes all positions not classified as “executive” or “clerical.” A current fee schedule is available on electronically at <http://www.ofheo.gov/docs/> or by regular mail.

(ii) *Computer searches for records.* Requesters will be charged at the actual direct costs of conducting a search using existing programming. These direct costs will include the cost of operating the computer equipment for that portion of operating time that is directly attributable to searching for records and the cost of the time of the employee performing the work, determined as described in paragraph (b)(1)(i) of this section. A charge will also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to OFHEO for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(iii) *Unproductive searches.* OFHEO may charge search fees even if no records are found that are responsive to the request or if the records found are exempt from disclosure.

(2) *Reproduction.* Records will be photocopied at a rate of \$.15 per page. For copies prepared by computer, such as tapes or printouts, the requester will be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of reproducing the record(s) will be charged.

(3) *Review.* Only requesters who are seeking records for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for initial review, *i.e.*, the review undertaken

the first time OFHEO analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a review are properly assessable.

(4) *Other services and materials.* Where OFHEO elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

[65 FR 55174, Sept. 13, 2000. Redesignated and amended at 65 FR 81327, Dec. 26, 2000]

§ 1703.23 Fees to be charged—categories of requesters.

(a) *Fees for various requester categories.* Paragraphs (b) through (e) of this section state, for each category of requester, the types of fees generally charged by OFHEO. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in paragraph (c) of § 1703.24. If OFHEO has reasonable cause to doubt the purpose specified in the request for which a requester will use the records sought, or where the purpose is not clear from the request itself, OFHEO will seek clarification before assigning the request a specific category.

(b) *Commercial use requester.* OFHEO shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of records. In accordance with § 1703.22, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(c) *Educational and noncommercial scientific institutions.* OFHEO shall charge fees for records requested by, or on be-

half of, educational institutions and noncommercial scientific institutions in an amount which equals the cost of reproducing the records responsive to the request, excluding the cost of reproducing the first 100 pages. No search fee shall be charged with respect to requests by educational and noncommercial scientific institutions. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution, and that the records are not sought for commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a noncommercial scientific institution).

(d) *News media.* OFHEO shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the records responsive to the request, excluding the costs of reproducing the first 100 pages. No search fee shall be charged with respect to requests by representatives of the news media. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(e) *All other requesters.* OFHEO shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (b), (c), or (d) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 1703.22, requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(f) For purposes of the exceptions contained in this section on assessment of fees, the word “pages” refers to paper copies of 8½ × 11 or 11 × 14. Thus,